



Legal Update  
Singapore  
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ADSAN LAW

## COVID-19 (TEMPORARY MEASURES) ACT (NO.14 OF 2020)

The COVID-19 pandemic has resulted in many businesses and individuals being unable to meet their contractual and financial obligations. In order to assist affected businesses and individuals, Parliament has introduced new statutory provisions as a means of protection for those facing the threat of legal proceedings.

The COVID-19 (Temporary Measures) Act (the “**Act**”) was passed by Parliament on 7 April 2020 with different parts of the Act commencing on staggered dates in April 2020. The primary purpose behind the enactment of the Act is to provide individuals and businesses temporary relief from legal action by creditors in various situations. These specific situations relate to:

1. Contracts;
2. Bankruptcy and insolvency proceedings;
3. Meetings; and
4. Court proceedings.

These temporary measures are intended to last for six (6) months, from 20 April 2020 to 19 October 2020 (the “**Prescribed Period**”) but may be extended for up to twelve (12) months. The Act imposes a moratorium on legal action, thereby giving parties time to negotiate and work out suitable arrangements.

This article will only focus on the new statutory provisions relating to **(1) CONTRACTS** and **(2) BANKRUPTCY AND INSOLVENCY PROCEEDINGS**, relief for both of which came into effect on 20 April 2020. This article also aims to provide creditors and debtors with an overview of the changes as well as some practical steps that can be taken in the period since the Act came into effect.



## **(1) TEMPORARY RELIEF FROM ACTIONS FOR INABILITY TO PERFORM SCHEDULED CONTRACT**

Part 2 of the Act governs the relief granted to parties unable to fulfil their contractual obligations due to COVID-19, and considers the effect of the safe distancing measures (for e.g., the Circuit Breaker measures that took effect from 7 April 2020 to 1 June 2020) that have disrupted businesses (“**Scheduled Contracts**”).

These provisions apply to certain types of contracts that are to be performed **ON OR AFTER 1 February 2020**, and only for contracts that were entered into **BEFORE 25 March 2020**.

The types of contracts that may be subject to relief include the following<sup>1</sup>:

- a. Secured loan facilities provided by financial institutions (licensed banks and finance companies) secured by any commercial or industrial immovable property located in Singapore, where:
  - a. the borrower of the facility is incorporated, formed, or established and carries on business in Singapore;
  - b. not less than 30% of its shares or other ownership interest is held by citizens of Singapore or permanent residents of Singapore or both; and
  - c. the turnover of the group (within the meaning of the Accounting Standards applicable to it) to which it belongs does not exceed \$100 million in the latest financial year; (i.e. SMEs)
- b. Performance bonds or the equivalent, granted pursuant to a construction or supply contract;
- c. Hire-purchase and conditional sales agreements for:
  - a. plant, machinery, or fixed asset located in Singapore, which are used for manufacturing, production, or other business purposes; and
  - b. commercial vehicles (for e.g. goods vehicles, private buses, and private hire cars);
- d. Event and tourism related contracts (e.g. venue or catering for weddings, tours, and cruise packages);
- e. Construction contracts and supply contracts (including performance bonds); and
- f. Leases and licenses of non-residential immovable property.

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<sup>1</sup> COVID-19 (Temporary Measures) Act 2020, The Schedule

In addition, the Act provides that Scheduled Contracts extend to individual contracts where the Singapore Government is a counterparty. This would therefore include contracts entered with the URA, JTC, and HDB as counterparties.<sup>2</sup>

Scheduled Contracts in relation to secured loan facilities will only include contracts with a bank licensed under the Banking Act or a finance company licensed under the Finance Companies Act as a counterparty. Loan facilities extended by other lenders not licensed under the Banking Act or Finance Companies Act will not be covered under the Act.<sup>3</sup>

### **When does the Scheduled Contract take effect?**

If the Scheduled Contract was entered into before 25 March 2020, with contractual obligations to be performed on or after 1 February 2020, that contract will be subject to the Act<sup>4</sup>. This includes a Scheduled Contract entered into before 25 March 2020 and which is automatically renewed in accordance with its contractual terms, notwithstanding the fact that it was renewed after 25 March 2020.

### **What actions by a contracting party are prohibited under the Act?**

The period of relief granted under the Act lasts for six months, from 20 April 2020 to 19 October 2020, but may be extended to a year.<sup>5</sup>

A party who wishes to obtain relief under the Act should serve a notification for relief<sup>6</sup> on the other party or parties to the contract and any guarantor or surety for its obligation in the contract.<sup>7</sup> This form can be accessed on the Ministry of Law's website<sup>8</sup>.

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<sup>2</sup> COVID-19 (Temporary Measures) Act 2020, S. 4(2)

<sup>3</sup> COVID-19 (Temporary Measures) Act 2020, The Schedule paragraph 1(a) & (b)

<sup>4</sup> COVID-19 (Temporary Measures) Act 2020, S. 5(1)(a)

<sup>5</sup> COVID-19 (Temporary Measures) Act 2020, S. 4(1)(a) and (b)

<sup>6</sup> COVID-19 (Temporary Measures) Act 2020, S. 3

<sup>7</sup> COVID-19 (Temporary Measures) Act 2020, S. 9

<sup>8</sup> COVID-19 (Temporary Measures) Act 2020, S. 5(1)(c), S. 9

<sup>9</sup> <https://www.mlaw.gov.sg/covid19-relief/notification-for-relief>

After a notification for relief is served, the Act prohibits the following actions against counterparties to a Scheduled Contract<sup>9</sup>:

- a. Starting or continuing court, insolvency, and arbitral proceedings under the Arbitration Act (Cap. 10);
- b. Enforcing security over immovable property;
- c. Enforcing security over movable property that are used for trade, business, or for professional purposes, for e.g. plant and machinery;
- d. Terminating lease or license of commercial or industrial property, on the basis of non-payment of rent;
- e. Levying execution against any property, except with the leave of the court;
- f. Repossession of any goods under a hire-purchase agreement; and
- g. Enforcing a judgment, an award made by an arbitral tribunal in arbitral proceedings, or a determination by an adjudicator under the Building and Constructions Industry Security of Payment Act.

The above actions are prohibited until (whichever is earliest)<sup>10</sup>:

- a. the expiry of the prescribed period;
- b. the withdrawal of the notification for relief; and
- c. the assessor making a determination that the case in question is not one that the Act applies to.

## **(2) TEMPORARY RELIEF FOR FINANCIALLY DISTRESSED INDIVIDUALS, FIRMS AND OTHER BUSINESSES**

The Act aims to provide temporary relief to debtors from legal action taken by creditors for up to 6 months. However, the government will continue to monitor the situation and may extend/adjust this 6-month period at a later date.

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<sup>10</sup> COVID-19 (Temporary Measures) Act 2020, S. 5(3)



## **INDIVIDUALS**

The monetary threshold for creditors to apply for bankruptcy against an individual has been **increased from S\$15,000 to S\$60,000**.

In addition, the monetary threshold for assessing suitability for the Debt Repayment Scheme has been **increased from S\$100,000 to S\$250,000**. The Debt Repayment Scheme is a pre-bankruptcy scheme administered by the Official Assignee under the Bankruptcy Act (Cap. 20). The purpose of the Debt Repayment Scheme is to enable a debtor to repay their debts over a period of time not exceeding five years, and in the process avoiding bankruptcy and all its restrictions and stigma.

It is to be further noted that prior to the passing of the Act, the period for debtors to respond to a statutory demand was 21 days. Since the passing of the Act, this period has been **increased from 21 days to 6 months**. This means that there will be a 6-month period for the debtor to respond to a statutory demand that is served AFTER 20 April 2020. During this period, creditors are prohibited from commencing any bankruptcy proceedings against the debtor.

## **BUSINESSES**

The Act provides similar relief for businesses. The monetary threshold to petition for the insolvency of a business has been **increased from S\$10,000 to S\$100,000**.

Similar to the extension of 21 days to a 6-month period for personal insolvency, the time for a business to satisfy a statutory demand has been **increased from 3 weeks to 6 months**.

In addition, directors of companies are temporarily relieved from their statutory obligation<sup>11</sup> to prevent their companies from trading while insolvent IF the debts are incurred in the ordinary course of business<sup>12</sup>. Directors remain criminally liable however, if the debts are incurred fraudulently.

## **FURTHER POINTS TO NOTE**

The aforesaid amendments do not affect statutory demands that were served prior to 20 April 2020 and bankruptcy applications made prior to 20 April 2020. In addition, unlike the other provisions of the Act granting temporary relief, there is no requirement for these debts (both for individuals and companies) to arise only on or after 1 February 2020.

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<sup>11</sup> COVID-19 (Temporary Measures) Act 2020, S. 5(2)

<sup>12</sup> Companies Act (Cap. 50), S. 339(3)

It is to be noted that the relief provided by the Act does not affect the contractual rights of banks to charge fees and interest for non-payment or late payment of loan obligations.<sup>13</sup> Nevertheless, the local banks have undertaken to defer principal payments on secured loans to SMEs until the end of 2020, subject to assessment of the quality of the security<sup>14</sup>. The Act therefore provides legal protection for the security provided and complements the banks' relief measures for SMEs.<sup>15</sup>

It has been observed lately that in view of the temporary changes to the Bankruptcy Act, as well as the ensuing effect on the efficacy of bankruptcy proceedings against individuals, that creditors are instead choosing to commence civil suits by way of writ action against individual debtors for monies owed to them.

Judgment obtained via writ action against a debtor serves a different immediate purpose other than bankruptcy but can still be effective in recovering monies owed to creditors. The Rules of Court provide different ways in which a judgment creditor can enforce an unsatisfied judgment. In addition, unsatisfied execution issued against a debtor in respect of a judgment debt owed to the judgment creditor can be a basis upon which a statutory demand is later made,<sup>16</sup> thus paving the way for a bankruptcy application to be made at a later stage.

## **CONCLUSION**

In this uncertain financial climate, it is advisable for both creditors who have monies owed, and debtors who owe monies to creditors, to see if an agreement as to payment can be made. Such payment agreements could include composite settlement of the debt, and/or instalment arrangements that can be effective for both creditors and debtors.

For creditors, in light of the difficult financial situations that most businesses and individuals might find themselves in, a compromise that includes composite settlement and/or instalment plans could ensure that at least part of (or the majority of) the debt owed can be recovered. For debtors, offering to make composite payment and/or committing to an instalment could help stave off legal proceedings and appease creditors.

However, it is to be noted that there is no one-size-fits-all approach to be taken as every situation is different. This article is meant to provide a general overview of the current state of the law with regard to contracts and bankruptcy and insolvency proceedings under the Act. If you require further legal advice and assistance, please do not hesitate to contact us.

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<sup>13</sup> COVID-19 (Temporary Measures) Act 2020, S. 22(2)

<sup>14</sup> <https://www.mas.gov.sg/news/media-releases/2020/comments-by-mas-on-covid-19-temporary-measures-bill>

<sup>15</sup> <https://www.mas.gov.sg/news/media-releases/2020/mas-and-financial-industry-provide-additional-support-for-individuals>

<sup>16</sup> <https://www.mas.gov.sg/news/media-releases/2020/comments-by-mas-on-covid-19-temporary-measures-bill>

<sup>17</sup> Bankruptcy Act (Cap. 20), S. 62(b)





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